
(2011) 10 AHC CK 0069
In the Allahabad High Court
Case No : Writ - C No. - 5162 of 1982

Shiv Nath

APPELLANT

Vs

Xth A.D.J.

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Citation : (2011) 10 AHC CK 0069

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sibghat Ullah Khan, J.—This writ petition was dismissed in default on 03.08.2001 and was restored on 12.10.2011 on which date arguments of learned counsel for the petitioner were also heard on the merit of the writ petition. No one appeared on behalf of the respondents. On 12.10.2011, an application filed by the petitioner for impleadment of Northern Railways was also dismissed.

2. Respondents No.3 to 5 instituted a suit for mandatory injunction against petitioner and respondent No.6, Mohan Lal (both of them are real brothers) in the form of O.S. No.43 of 1976, which was decreed ex parte and it was directed that defendants should deliver possession of the property in dispute to the plaintiffs.

3. Earlier parties had litigated under Sections 145/146, Cr.P.C. in which possession was delivered to the defendants. For recalling the ex parte judgment and decree one of the plaintiffs/ brothers, i.e. the petitioner alone filed restoration application under Order IX Rule 13, C.P.C. which was registered in the form of Misc. Case No.62/74/79. Munsif Hawali Kanpur rejected the application on 15.11.1980 against which order Misc. Appeal No.373 of 1980 was filed by the petitioner, which was also dismissed on 02.02.1982 by X Additional District Judge, Kanpur hence this writ petition.

4. Both the courts below have mentioned that petitioner's real brother, i.e. respondent No.6 was personally served by process server, hence petitioner's assertion that he was not aware of the suit was wrong. There was absolutely no conflict of interest between both the brothers. Process Server reported that the house was locked hence he affixed notice meant for Shiv Nath at the door of the house. However the notice sent to petitioner Shiv Nath through registered post returned with the endorsement of the postman that petitioner had refused to accept the same.

5. Absolutely no collusion of postman with the plaintiffs respondents could be involved in the endorsement of refusal by the postman as service upon the other defendant i.e. brother of the petitioner was personal. (through process server)

6. Accordingly, I do not find least error in the findings of the courts below. The writ petition is therefore dismissed.